

Senate Bill 425

By: Senator Grant of the 25th

**AS PASSED**

**AN ACT**

To amend Chapter 9 of Title 45 of the Official Code of Georgia Annotated, relating to insuring and indemnification, so as to amend certain provisions pertaining to providing insurance coverage by the commissioner of administrative services; to authorize the Department of Administrative Services to establish incentive programs including differential premium rates and deductibles based on loss histories of state agencies, institutions, and authorities, and such entities' participation in loss control programs; to provide for definitions; to repeal provisions relating to employee operation of state motor vehicles; to amend Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the Department of Administrative Services, so as to authorize the commissioner of administrative services to establish incentive programs; to establish a return to work program; to provide for premiums, deductibles, and penalties for state entities; to amend Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating to public property, so as to authorize the Department of Administrative Services to establish incentive programs including differential premium rates and deductibles based on loss histories of state agencies, institutions, and authorities, and such entities' participation in loss control programs; to amend Code Section 50-21-33, relating to liability insurance or self-insurance programs and additional coverages, so as to authorize the Department of Administrative Services to establish incentive programs including differential premium rates and deductibles based on loss histories of state agencies, institutions, and authorities, and such entities' participation in loss control programs; to provide for the deposit of funds collected from state entities; to provide for related matters; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Chapter 9 of Title 45 of the Official Code of Georgia Annotated, relating to insuring and indemnification, is amended by revising subsection (a) of Code Section 45-9-4, relating to the commissioner of administrative services purchasing insurance or entering into indemnity contracts, as follows:

"(a) When the commissioner of administrative services determines that an adequate number of agencies, boards, bureaus, commissions, departments, or authorities of this state have requested the commissioner to do so, the commissioner shall have the authority to purchase policies of liability insurance, reinsurance, or contracts of indemnity insuring or indemnifying the officers, officials, or employees of such agencies, boards, bureaus, commissions, departments, or authorities against personal liability for damages arising out of the performance of their duties or in any way connected therewith, under a master policy or on a blanket coverage basis with or without deductibles or excess coverage. The commissioner may provide for endorsements for contractual liability and, where necessary or convenient to the public functions of the state, the commissioner may also provide for additional insureds. In such event, the commissioner may alternatively retain all moneys paid to the Department of Administrative Services as premiums on such policies of liability insurance or contracts of indemnity, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve fund for the payment of such liability under, and the expenses necessary to administer properly, a self-insurance program. If the commissioner decides to institute a self-insurance program, the commissioner shall establish and maintain a reserve fund for the payment of liabilities arising out of claims against officers, officials, and employees of the state and for any additional insureds. The commissioner shall also charge to state entities such premiums, deductibles, and other payments taking into account any direct appropriations as shall be necessary to maintain the soundness of the insurance or self-insurance programs established under this Code section. The commissioner is further authorized to establish incentive programs, including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the liability trust fund provided for in this Code section. Any amounts held by the commissioner which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the self-insurance program. The director of the Office of Treasury and Fiscal Services shall invest these funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the self-insurance

program. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this subsection, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services."

## **SECTION 2.**

Said chapter is further amended by revising Code Section 45-9-4, relating to the commissioner of administrative services purchasing insurance or entering into indemnity contracts, by adding a new subsection as follows:

"(g) The policy of insurance provided for in this Code section may also provide liability coverage to nonprofit agencies and their employees, which agencies have contracted with the Department of Juvenile Justice, the Department of Transportation, or the Department of Human Resources to furnish certain services; provided, however, that such liability coverage shall be limited to damages arising out of the authorized use of a state-owned vehicle or a vehicle funded pursuant to subsection (a) of Code Section 49-2-13.1 by an employee of such nonprofit agency during the course of such person's employment with such nonprofit agency and the cost of such insurance furnished to any such nonprofit agency and its employees shall be allocated to and paid by such agency before any coverage shall be effective. For the purpose of this Code section, 'nonprofit agency' means any nonprofit or charitable organization, association, corporation, partnership, or other entity registered pursuant to Section 501(c)(3) of the Internal Revenue Code."

## **SECTION 3.**

Said chapter is further amended by revising subsection (a) of Code Section 45-9-4.2, relating to liability coverage for nonprofit agencies providing services to the mentally retarded, as follows:

"(a) For the purposes of this Code section, the term 'nonprofit agency' means a nonprofit or charitable organization, association, corporation, partnership, or other entity registered pursuant to Section 501(c)(3) of the Internal Revenue Code."

## **SECTION 4.**

Said chapter is further amended by repealing Article 3, relating to the operation of state motor vehicles by employees, and designating said article as reserved.

**SECTION 5.**

Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the Department of Administrative Services, is amended by revising Code Section 50-5-12, relating to the formulation of a self-insurance program for workers' compensation for state employees, as follows:

"50-5-12.

The Department of Administrative Services shall formulate and initiate a sound program of self-insurance for workers' compensation benefits for all employees of the state, including employees of authorities. In formulating the self-insurance program, the department is directed to establish a return to work program that promotes the return of an employee to employment by creating transitional employment prior to full recovery by providing temporary assignments for an employee that are meaningful and medically approved until the employee can return to his or her regularly assigned duties. If an agency or authority does not allow an employee to engage in transitional employment under the return to work program, the number of authorized positions in the budget for the agency or authority shall be decreased by the number of employees collecting workers' compensation not engaged in return to work employment for whom return to work plans have been developed."

**SECTION 6.**

Said chapter is further amended by revising Code Section 50-5-13, relating to the extent, amounts, reserves, and excess coverage for a self-insurance program, as follows:

"50-5-13.

The department shall determine the amount and extent of self-insurance which the state can assume, the necessary reserves needed, the premiums to be charged and any deductibles to be paid by agencies and authorities, the amount of benefits to be paid within the scope of the workers' compensation statutes, and type of addition or excess insurance coverage that may be required. The department is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and

deposit those funds into the workers' compensation trust fund provided for in Code Section 50-5-14."

#### **SECTION 7.**

Said chapter is further amended by revising subsection (b) of Code Section 50-5-16, relating to liability insurance and self-insurance for state authorities, as follows:

"(b) State funds may be appropriated for the program, but the commissioner shall charge such premiums, deductibles, and other payments as the commissioner determines necessary or useful. The commissioner is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. From the funds available to the commissioner, the commissioner shall establish such reserves as the commissioner determines necessary, purchase commercial policies, employ consultants, and otherwise administer the program. Any amounts held by the liability insurance or self-insurance funds which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in trust accounts for credit only to the liability insurance and self-insurance funds. The director of the Office of Treasury and Fiscal Services shall invest the liability insurance and self-insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the liability insurance and self-insurance funds. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services."

#### **SECTION 8.**

Said chapter is further amended by revising paragraph (6) of Code Section 50-5-51, relating to the power, authority, and duty of the Department of Administrative Services, as follows:

"(6) To procure all fidelity bonds covering state officials and employees required by law or administrative directive to give such bonds; and, in order to provide the bonds at a minimum expense to the state, the bonds may be procured under a master policy or policies providing insurance agreements on a group or blanket coverage basis with or without deductibles or excess coverage over the state's retention as determined by the commissioner. Fidelity bonds covering state officials and employees which are procured pursuant to this paragraph shall expressly provide that all state officials and employees who are required by law to be bonded be named in the fidelity bond as insureds or beneficiaries under the terms of the fidelity bond. Inclusion of any state official, officer, or employee required by law or administrative directive to be specifically bonded in a master fidelity bond under the terms of this part shall satisfy any statutory requirement that the official, officer, or employee be bonded. Fidelity bonds procured pursuant to this paragraph shall also expressly provide for indemnification, out of the proceeds of the fidelity bonds, of all state officials and employees for any liability or expense of any nature resulting from a claim on the state official's or employee's bonds which is due to or as a result of an act of a subordinate of the state official or employee. In order to finance the continuing liability established with other agencies of state government, the commissioner is authorized to retain all moneys paid to the department as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve for the payment of such liability and the expenses necessary to administer properly the insurance program. The commissioner is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. The commissioner shall invest the moneys in the same manner as other such moneys in his or her possession;"

#### **SECTION 9.**

Chapter 16 of Title 50 of the Official Code of Georgia Annotated, relating to public property, is amended by revising Code Section 50-16-9, relating to the formulation of a self-insurance plan for the state's properties, as follows:

"50-16-9.

(a) The Department of Administrative Services may formulate and initiate a plan of self-insurance for the state's properties. The department shall cause:

- (1) A complete appraisal to be made of all the state's insurable property as to value;
- (2) A complete classification to be made of all the state's insurable property by type of risk; and
- (3) A determination and recommendation to be made of the amount and extent of self-insurance which the state can assume, the necessary reserves needed, the minimum claim to be paid on each risk, the type of additional or excess insurance coverage that may be required, the premiums to be charged, and any deductibles to be paid by state agencies and authorities.

(b) The department is further authorized to establish incentive programs, including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the state insurance and hazard reserve fund provided for in this chapter.

(c) Upon the formulation of a plan of self-insurance based on the foregoing determinations made and submitted by the Department of Administrative Services, the Governor, by executive order, may establish and effectuate a plan of self-insurance; and the General Assembly from time to time shall provide and maintain by appropriation an insurance reserve fund."

#### **SECTION 10.**

Said chapter is further amended by repealing Code Section 50-16-10, relating to the formulation of a self-insurance plan for public school buildings, and designating said Code section as reserved.

#### **SECTION 11.**

Said chapter is further amended by revising Code Section 50-16-11, relating to employment of personnel to carry out self-insurance plans, as follows:

"50-16-11.

The Department of Administrative Services is authorized and empowered to employ, as a regular member of its staff, persons with expert knowledge, training, and experience in underwriting and planning and such other personnel, including temporary professional insurance engineers and actuaries, as are necessary to carry out the details provided in Code Section 50-16-9."

## **SECTION 12.**

Code Section 50-21-33, relating to liability insurance or self-insurance programs and additional coverages, is amended by revising subsection (d) as follows:

"(d) The Department of Administrative Services shall establish and charge to state government entities such premiums, deductibles, and other payments, taking into account any direct appropriations as shall be necessary to maintain the soundness of the insurance or self-insurance programs established under this Code section. The premiums and deductibles charged to each state government entity may be established on such basis as the Department of Administrative Services shall deem appropriate and such basis may include the number of employees, the aggregate annual budget of the state government entity, and unique exposures, loss history, or claims pending against such state government entity. The department is further authorized to establish incentive programs including but not limited to differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the State Tort Claims Trust Fund provided for in this Code section."

## **SECTION 13.**

All laws and parts of laws in conflict with this Act are repealed.